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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/082,290	02/26/2002	David W. Gerdt	A-9001D	8068
181	7590	07/20/2004	EXAMINER	
MILES & STOCKBRIDGE PC 1751 PINNACLE DRIVE SUITE 500 MCLEAN, VA 22102-3833			KANG, JULIANA K	
		ART UNIT	PAPER NUMBER	2874

DATE MAILED: 07/20/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/082,290	GERDT ET AL. <i>[Signature]</i>	
<b>Examiner</b>	<b>Art Unit</b>	Juliana K. Kang	2874

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 21 May 2004 and 06 June 2003.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 4,5,7,8 and 10-26 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 4,5,7,8 and 10-26 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | Paper No(s)/Mail Date. _____.   |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>6/6/03</u> . | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
|   | 6) <input type="checkbox"/> Other: _____.                                   |

Applicant's communications filed on May 21, 2004 and February 23, 2004 have been carefully studied by the Examiner. The preliminary amendment filed on June 6, 2003 is acknowledged by the Examiner. Thus, the previous Office action that did not reflect the preliminary amendment is hereby withdrawn. This action is not made final.

***Double Patenting***

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

**Claims 4, 5, 10, 11, 23 and 24 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1, 3, 4, 6-17, 19-25, and 27-50 of U.S. Patent No. 6,463,187 B1 and further in view of Scanlon (U.S. Patent 5,853,005)**

Patent 6,463,187 B1 disclose every aspect claimed invention including placing the support member around a wrist of a patient. However, Patent 6,463,187 B1 does not teach a pressurizing device and the location of the pressurizing device. Scanlon teaches a sound and movement monitor used in various applications with different

configurations for different applications. One of the applications is for detecting blood pressure that has a blood pressure cuff with a pressure bulb to apply pressure to a bladder-piston assembly, a liquid reservoir, hose and a sensor pad (see column 12 lines 43-67). Thus, it would have been obvious to one with ordinary skill in the art at the time the invention was made to use a pressurizing device in Patent 6,463,187 B1 to control the pressure of the device for different sensing applications as taught by Scanlon. Even though the claimed location of the pressurizing device is not taught by Patent 6,463,187 B1 and Scanlon, it would have been obvious to one having ordinary skill in the art at the time the invention was made to connect the pressurizing device to the fluid column at a position between the first and second ends, since it has been held that rearranging parts of an invention involves only routine skill in the art.

**Claims 7 and 8 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1, 3, 4, 6-17, 19-25, and 27-50 of U.S. Patent No. 6,463,187 B1 and Scanlon (U.S. Patent 5,853,005) and in view of Scanlon (U.S. Patent 5,684,460, submitted by applicant).**

As described above, U.S. Patent No. 6,463,187 B1 and Scanlon (U.S. Patent 5,853,005) teach the claimed invention including the liquid fluid column. However, U.S. Patent No. 6,463,187 B1 and Scanlon (U.S. Patent 5,853,005) do not teach the gaseous fluid column and a hose. The Scanlon (U.S. Patent 5,684,460) teaches a sound and movement monitor comprising a fluid column to transmit the pressure to the sensing device wherein the fluid column can be filled with water or air (see column 4 lines 38-42). It would have been obvious to one having ordinary skill in the art at the

time the invention was made to use air in U.S. Patent No. 6,463,187 B1 and Scanlon (U.S. Patent 5,853,005) as taught by Scanlon (U.S. Patent 5,684,460), since Scanlon (U.S. Patent 5,684,460) teaches at column 4 line 40 using either water or gas for the fluid column to transmit the pressure. Using a hose in U.S. Patent No. 6,463,187 B1 and Scanlon '005 would have been obvious as taught by Scanlon '460 to place the sensor at a different location (see Scanlon '460 column 4 line 11) to protect the sensor from damaging due to external pressure by the object that is to be monitored.

**Claims 12-22, 25 and 26 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over 1, 3, 4, 6-17, 19-25, and 27-50 of U.S. Patent No. 6,463,187 B1 and further in view of Scanlon (U.S. Patent 5,684,460, submitted by applicant).**

Regarding claims 12, 13, 15, 16, 21, 22, 25 and 26, Patent 6,463,187 B1 disclose every aspect of claimed invention except for a support member having a surface configured to support an object to be monitored. Scanlon teaches a movement/sound monitor to sense an infant on a crib comprising a base member configured as a fluid-filled sensing pad (bladder) for supporting the infant and a transducer for detecting movement or acoustic activity of the infant wherein the sensing pad is connected to the sensor through a hose filled with either air or water to transmit the pressure fluctuation to the sensor and a monitor from the sensing pad. Thus, it would have been obvious to one having ordinary skill in the art at the time the invention was made to use the support member (sensing pad, bladder) in Patent 6,463,187 B1 as taught by Scanlon for different sensing application including monitoring SIDS.

Regarding claim 14, Patent 6,463,187 B1 disclose every aspect of claimed invention except for a hose. Scanlon teaches hose (16) to transmit the pressure to the sensor (see column 6 lines 4-9). Different sensing application requires different configuration such as having a sensor remotely located from the sensing pad. Placing the sensor away from the sensing pad would protect the sensor from damaging due to external pressure. It would have been obvious to one having ordinary skill in the art at the time the invention was made to use a hose in Patent 6,463,187 B1 to transmit the pressure to the remote sensor to protect the sensor from damaging.

Regarding claims 17-20, as described above Patent 6,463,187 B1 and Scanlon (U.S. Patent 5,684,460) the claimed invention except the support member having either recessed or cut-out portion to receive the transducer or hose. It would have been obvious to one having ordinary skill in the art to recognize a cut-out portion in the support member place in order to place the transducer in the support member (sensing pad) and to connect the hose to provide continuous fluid fluctuation (see column 4 line 10).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Juliana K. Kang whose telephone number is (571) 272-2348. The examiner can normally be reached on Mon. & Fri. 10:00-6:00 and Tue. & Thur. 10:00-3:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rod Bovernick can be reached on (571) 272-2344. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Juliana Kang  
July 13, 2004